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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

CTI/143087

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 13, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Public Assistance Collection Unit concerning a tax intercept, a hearing was held on October 30, 2012, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely with respect to notice s of child care overissuance, timely as to a tax intercept notice and whether the Department of Children and Families correctly sought to intercept the Petitioner's tax refund to collect an overpayment of childcare payments in the amount of \$3972.84.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Darryl E. Caper

Milwaukee Early Care Administration (MECA)  
1220 W. Vliet Street  
1st Floor, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a Child Care Overpayment Notifications dated February 9, 2012 that informed Petitioner that she had been overissued child care benefits in the total amount of \$599.86 for the

period from December 6, 2009 to May 31, 2010. The notice was sent to Petitioner at [REDACTED]. The notice does contain appeal instructions and notes a 45 day time limit for filing an appeal with the Division of Hearings and Appeals.

3. Petitioner was sent a Child Care Overpayment Notifications dated February 9, 2012 that informed Petitioner that she had been overissued child care benefits in the total amount of \$3372.98 for the period from November 28, 2010 to May 31, 2011. The notice was sent to Petitioner at [REDACTED]. The notice does contain appeal instructions and notes a 45 day time limit for filing an appeal with the Division of Hearings and Appeals.
4. A repayment agreement dated March 2, 2012 was sent to Petitioner at the [REDACTED] address.
5. 'Dunning' notices dated April 3, 2012, May 2, 2012 and June 4, 2012 were sent to Petitioner at the [REDACTED] address.
6. The [REDACTED] address was, and is, the correct address for Petitioner.
7. Petitioner was sent a tax intercept notice dated July 13, 2012 that informed her that any tax refunds owed Petitioner would be subject to intercept to repay the \$3972.84. That notice was sent to Petitioner at [REDACTED] address. It contained appeal instructions and noted that the appeal had to be filed within 30 days of the date of the notice.
8. The 30<sup>th</sup> day for the tax intercept notice was August 12, 2012, a Sunday. This appeal was filed on Monday, August 13, 2012.

### DISCUSSION

The first question is whether Petitioner's appeal is timely with respect to the February 9, 2012 overpayment notices. In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. An appeal for the child care program must be filed within 45 days of notice of adverse action. *See Child Care Policy Manual, 2.5.0.; also see Wis. Admin. Code, § HA 3.04(3).*

Here the February 9, 2012 notifications of overissuance were sent to Petitioner at the correct address. Those notices did contain appeal instructions that informed Petitioner that the time limit for filing an appeal to contest the overissuance was 45 days. No appeal was received by the Division of Hearings and Appeals. I am, therefore, concluding that Petitioner's appeal is untimely as to the original notices of overpayment. I also note that a repayment agreement and dunning notices were sent to Petitioner at the correct address. These did not trigger an inquiry from Petitioner as to the overpayment and what to do about it.

As for the tax intercept notice, I do conclude that Petitioner's appeal is timely. When the time an act to be done falls on a Sunday or holiday, the act can be done on the next secular day. *Wis. Stats., § 990.001(4).* Here the 45<sup>th</sup> day was Sunday August 12, 2012. Petitioner's appeal was filed on Monday August 13, 2012.

As to the merits of the overpayment case, *Wisconsin Statute §49.195(3)*, provides that the agency must determine if a childcare overpayment has occurred under §49.155 and that the agency must seek recovery of the overpayment. The Department of Children and Families (DCF) may utilize tax intercept as a means of recovering the overpayment. *Wis. Stat., §49.85*. In fact, the *Statutes at §49.85(2)(b)*, require that the DCF, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of W-2 benefits, including child care.

The Department of Children and Families must notify the person that it intends to certify overpayments to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at §49.85(3).*

The hearing right is, however, limited and is described in *Wis. Stat.*, §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**  
(Emphasis added).

As Petitioner was notified of the right for hearing as to the overpayment she has had a prior opportunity for a hearing on the merits of the overpayment at issue. Therefore the tax intercept notice does not provide new jurisdiction to address whether the claim was determined correctly. I also note that there was no issue as to amount paid on the overpayment or identity of Petitioner. As a result, the Division of Hearings and Appeals does not have jurisdiction to reverse the child care overpayment, in whole or in part, as part of this tax intercept appeal because the correctness of the overpayment would have been reviewed in a prior child care overpayment hearing. Though the Petitioner wanted to address the underlying overpayment at the hearing for this tax intercept, it was not addressed as that appeal right has lapsed.

The Department may utilize tax refund interception as a means of recovering the overpayment.

Finally, Petitioner does maintain that she should not be charged with the full overpayment here as she was not using the child care that billed the Shares program after November 2010. Given the timeliness issue discussed above, this defense is not addressed here. I can only suggest that either Petitioner or the agency or both take steps to check into the potential discrepancies so the correct party is made responsible for this overpayment. The methods for contacting the Department of Children and Families (DCF) about this are as follows (from the DCF website):

Reporting Fraud  
If you suspect fraud, be a part of the solution.  
You may remain anonymous.

How to submit allegations:

Call 1-877-302-FRAUD (3728)  
OR - If you are reporting Child Care Fraud

■ Submit allegations by filling out the Report Child Care Fraud form  
■ Send an e-mail to [dcfmbchildcarefraud@wisconsin.gov](mailto:dcfmbchildcarefraud@wisconsin.gov)  
■ Write to:  
Department of Children and Families  
Fraud Detection and Investigation Unit  
PO Box 8916  
Madison, WI 53708-8916.

### **CONCLUSIONS OF LAW**

1. That Petitioner's appeal is untimely as to the February 9, 2012 notices of overpayment.
2. Petitioner's appeal is timely as to the tax intercept notice involved here.
3. That the notice of the intent to intercept Petitioner's income tax refund does not provide a new opportunity for a hearing on the merits of the child care overpayment claim where that issue could have been addressed at a prior hearing.
4. That the Department of Children and Families may certify the sum of \$3972.84 as an amount due, and may proceed with the action to intercept the Petitioner's income tax refund.

Now therefore, it is

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

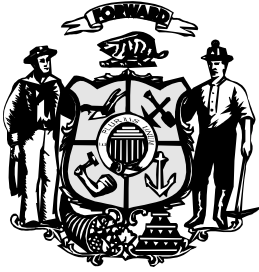
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 28th day of November, 2012

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 28, 2012.

Milwaukee County Department of Human Services  
Public Assistance Collection Unit